



IN THE SUPREME COURT OF NAURU  
AT YAREN

APPEAL NO. 71/2015

Being an appeal against a decision of the Nauru Refugee  
Status Review Tribunal brought pursuant to s43 of the  
*Refugees Convention Act 2012*

BETWEEN

VEA031

AND

The Republic of Nauru

APPELLANT

RESPONDENT

Before: Khan ACJ  
Date of Hearing: 28 March 2017  
Date of Judgment: 27 September 2017

Case may be cited as: VEA031 v The Republic

**CATCHWORDS:**

Whether the Tribunal considered the documents tendered by the appellant.

Held: The Tribunal properly considered the documents and placed no weight on them as the appellant's credibility was in issue and the documents appeared to be fake and the contents were in direct conflict with the appellant's evidence.

**APPEARANCES:**

Counsel for the Appellant: In person (Ms Montalban as McKenzie friend)  
Counsel for the Respondent: R O'Shannessy

**JUDGMENT**

**INTRODUCTION**

1. The appellant filed an appeal against the decision of the Refugee Status Review Tribunal ("the Tribunal") pursuant to s 43(1) of the *Refugees Convention Act 2012* ("the Act") which states:

A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.

2. The Tribunal delivered its decision on 22 May 2015 affirming the decision of the Secretary for the Department of Justice and Border Control (“the Secretary”) that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.
3. The appellant filed an appeal in this Court on 30 October 2015.

#### EXTENSION OF TIME

4. The Tribunal’s decision was delivered on 22 May 2015 and it was received by the appellant on 30 May 2015. Under s 43(3) of the Act the appellant was required to file the appeal within 28 days of 30 May 2015.
5. The appeal was not filed within 28 days. The appellant with the consent of the respondent made an application for extension of time on 12 June 2015. The Registrar purported to grant an extension on 17 June 2015 for the appeal to be filed on or before 31 August 2015. Following the decision in *Kun v Secretary for Justice and Border Control*<sup>1</sup> it became clear that the Act did not confer any powers on the Registrar to extend the time.
6. The appellant filed a further application for extension of time with the consent of the respondent on 28 August 2015. On 25 September 2015, the Registrar made an order granting an extension of time for the appeal to be filed by 31 October 2015.
7. The Act was amended by the *Refugees Convention (Amendment) Act 2015* (“Amendment Act”) which came in to effect on 14 August 2015. Under s 43(3) of the Amendment Act, the time for filing of the appeal was increased from 28 days to 42 days and s 43(5) gave the Court discretion to grant an extension beyond the 42 days if it was satisfied that it was in the interests of the administration of justice to do so.
8. The orders made on 25 September 2015 in my view were valid and therefore the appeal filed on 30 October 2015 was competent. There was some confusion on the part of the respondent that the appeal was not competent but that is not so.

#### BACKGROUND

9. The appellant is a 31 year old man from Bangladesh.
10. He was born on 31 December 1985 in a village in Kishorganji district. He is a Sunni Muslim and speaks Bengali, Malay and Hindi.
11. The appellant is married with one child. His parents, wife, child and one sister remain in Bangladesh. Another sister is deceased.

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<sup>1</sup> [2015] NRSC 18 (Khan J).

12. After eight years of education, the appellant commenced work in 2001 as a shop assistant in Dhaka, which is about two hours away by bus. He would return every three to four months. His parents and sister reside in the village, which has 500 to 700 residents. Once his father fell ill the family hired workers to farm their land as his father's brothers and nephews work in Dhaka.
13. While living in Dhaka, the appellant worked from 10am to 8pm and socialised with friends until around midnight. His accommodation was provided by his employer. He remained in this occupation until 2008.
14. In 2001, the appellant became involved with the Bangladesh Nationalist Party ("BNP") while in Dhaka and was responsible for encouraging people to attend meetings and offering inducements such as money and food. He worked with his friends and sometimes knocked on people's doors in the slum area to invite them to meetings. He supported the BNP because it promoted his Islamic faith and because he respected the founder of the party, Ziaur Rahman. He did not join the party formally.
15. In 2007, AL members began to harass the appellant. His route to work passed the home of a local of AL politician Hazi Salam and on one occasion he was caught up in an argument and hit below the eye. He was given medicine at a pharmacy and continued to work.
16. In 2008, the appellant received two threats from AL members that he would be killed or beaten if he continued to live in the area and support BNP. He initially did not take heed of these threats because he wanted to maintain his employment and did not have another place to live. He did not alert the police because he claimed they were intimidated by the local AL politician Hazi Salam.
17. In late 2008, the appellant travelled to Malaysia as he faced risk on a daily basis in Bangladesh. He felt that "his life would be safe in Malaysia" and he found work in a furniture company there.
18. He returned home to his family's village in Bangladesh in November 2011 because he wanted to marry and intended to stay there. He thought it would now be safe to go back and his girlfriend was pressured to marry someone else. He got married and stayed in the family house. It is unclear as to how long he stayed in Bangladesh and his unemployment history showed that he was employed in Malaysia from 2008 to 2013. He lived in his home village rather than returning to Dhaka.
19. In late January 2012, the appellant planned to attend an anti-government protest rally in Kishorganji District because he wanted to demonstrate his anger and was encouraged by his friends. He was beaten by AL members on the way to the rally and was hospitalised. He later arranged for a medical certificate to be issued in relation to his treatment at this time.
20. The appellant then lived with his wife's family in a neighbouring village. He hid in the house to avoid being detected. He returned to Malaysia a month later in February 2013 to avoid danger.

21. In late 2013, the appellant departed Malaysia by boat and arrived on Nauru via Indonesia and Christmas Island on 18 November 2013.
22. Following his departure, the appellant's family was harassed by AL members looking for the appellant in June 2014. His father was injured and suffered a stroke and his family have moved to stay with other relatives for their safety. When his mother returned to the house she was interrogated by AL members and her hand was broken. His father is supportive of Jamaat-e-Islami ideology but does not actively support them.

#### APPLICATION TO THE SECRETARY

23. On 5 December 2013, the appellant attended a Transfer Interview.
24. On 27 February 2014, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.
25. On 31 October 2014, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

#### APPLICATION TO THE TRIBUNAL

26. The appellant made an application for review of the Secretary's decision pursuant to s 31(1) of the Act which provides:

A person may apply to the Tribunal for merits review of any of the following:

- a) a determination that the person is not recognised as a refugee;
  - b) a decision to decline to make a determination on the person's application for recognition as a refugee;
  - c) a decision to cancel a person's recognition as a refugee (unless the cancellation was at the request of the person);
  - d) a determination that the person is not owed complementary protection.
27. On 3 November 2014, the appellant made a statement and on 17 March 2015 his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal.
  28. On 23 March 2015, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Bengali and English languages.
  29. The Tribunal handed down its decision on 22 May 2015 affirming the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

## THIS APPEAL

30. The appellant uses a “dot point” format without numbering the grounds of appeal. The grounds of appeal read as follows:

The appellant hereby appeals pursuant to section 43 of the Refugees Convention Act 2012 against the decision of the Refugee Status Review Tribunal made on 22<sup>nd</sup> day of May 2015 on the following grounds:

- Ground One - I am not happy with the Tribunal’s decision and believe justice was not done;
- Ground Two - I believe I have every ground to be recognised as a refugee and that is why I have left my country of Bangladesh;
- Ground Three - The Tribunal did not make a fair decision based on my evidence;
- Ground Four - The documentary evidence that I provided was not considered at all. The documents consist of a Medical Certificate and a Letter of Support from the Bangladeshi National Party (BNP); and
- Ground Five - The Tribunal stated that fraudulent documents can be created in Bangladesh. The Tribunal suspected that my documents were not authentic however the Tribunal did not say clearly that my documents were fake. The Tribunal said that because of the high level of fraudulent documents coming from Bangladesh, they would not put weight on my documents.

## SUBMISSIONS

31. The appellant was self-represented and did not file any written submissions. He was invited by the court to make submissions in support of his grounds of appeal but he chose not to do so. He told the court that he will be relying on his grounds of appeal. The respondent filed written submissions and made oral submissions at the hearing which was of assistance to the Court.

## CONSIDERATION

32. In relation to these grounds, the appellant submits that he was not satisfied with the Tribunal’s decision because he thought that he ought to have been recognised as a refugee. He also submitted that the Tribunal’s decision was not fair. As the appellant is acting in person, he probably does not understand the role of the Tribunal and the role of this Court in the context of the Act. Insofar as the Tribunal is concerned, it is entrusted with the task of reviewing the decision of the Secretary as provided for in

s 31 of the Act. The role of this Court is limited to considering an appeal on a “point of law” under the provision of s 43 when an appellant is not recognised as a refugee.

33. The appellant filed grounds of appeal which can be grouped into one ground of appeal that is “the Tribunal’s decision was not correct”. The appellant submitted that the medical report that he had tendered regarding his injuries sustained and a letter from BNP which set out the role played by him in the party were not considered. The Tribunal mentioned that the documents were fake; however, it did not clearly state that the documents were fake and therefore he finds that to be confusing.
34. The respondent in response submits that in the first three grounds of appeal, the respondent effectively disagrees with the Tribunal’s decision and invites this Court to conduct a merits review which this Court cannot do. The respondent agrees that in bullet points three and four the Tribunal dealt with the medical report and the letter from BNP and further agrees that the Tribunal did not conclusively make a finding that the said documents were fake. The respondent submits that the Tribunal gave no weight to the documents in determining the appellant’s claim which it was entitled to do and gave its reasons for doing so.

#### MEDICAL REPORT

35. The medical report was dealt with in detail at [23] of its decision by the Tribunal where amongst other things it stated that:
- a) It had similar credibility concerns about the authenticity of the medical report dated 8 January 2014;
  - b) The Tribunal asked why a doctor would state that the injury was due to a “political quarrel on that day” when the report was written on 8 January 2014;
  - c) The medical certificate related to treatment provided in January 2012 and was generated when the appellant was in Nauru and the Tribunal found it difficult to understand as to why would a doctor issue a medical report when the patient was not in the country;
  - d) The Tribunal put to the appellant that it was quite easy to obtain fraudulent documents in Bangladesh and that in light of these credibility issues the Tribunal might conclude that these documents were bogus and relied on country information;
  - e) The appellant responded that it is possible to arrange for false documents but maintained that his documents were genuine;
  - f) The appellant stated that he asked his family for a medical report because he had problems with his refugee matter;
  - g) His representatives stated that it was not unusual for a medical report to state the cause of injuries;

- h) The Tribunal stated that it did not explain as to why would the doctor would state that the injury was due to political quarrel *on that day* when the letter was generated two years later.

#### LETTER FROM BNP

36. The Tribunal considered the letter from BNP at [27] at its decision where it stated as follows:
- a) The Tribunal told the appellant that it had many concerns about the authenticity of the letter of reference that he provided from BNP;
  - b) That it did not correspond with the profile that he claimed to have with the party;
  - c) The letter stated that he was an “activist of BNP of Kishoreganj sadar upazila Executive committee” and that he took part in several agitations, strikes and other political activities against the ruling AL.
  - d) That Bangladesh law enforcement authorities took steps to arrest him and put him in custody;
  - e) The appellant was asked why the BNP committee in his home district generated the letter when all his political activities took place in Dhaka;
  - f) The appellant was asked why would the letter state he held a position on the executive when he told the Tribunal that he was not a formal member and had never been an office bearer;
  - g) In response, the appellant stated that he was active when he made return visits to the village and that the BNP person who prepared the letter made a mistake.

#### CREDIBILITY ISSUES

37. The credibility issues discussed at [23] and [27] have to be viewed in light of the matters discussed at [22] where the following transpired:
- a) When asked by the Tribunal what happened to him on the way to the protest, he said AL supporters beat him and he was hospitalised;
  - b) The Tribunal put to the appellant that he had given a different version in his evidence at the Transfer Interview where he stated that police beat him and caused him to be hospitalised;
  - c) The Tribunal further put to the appellant that submissions from his legal representative on 9 May 2014 confirmed that it was the police who beat him;
  - d) The appellant responded that it was AL supporters who beat him.

## TRIBUNAL FINDING

38. The Tribunal made the following finding at [40] where it stated:
- a) That "he gave inconsistent evidence about whether it was the police or AL supporters who beat him at the rally";
  - b) The Tribunal concluded that the medical report obtained two years after the actual hospitalisation was generated for the sole purpose of strengthening his case.
39. In light of the above, the Tribunal was quite justified in placing no weight on the medical report and the letter from BNP.
40. In the circumstances, this appeal has no merit and all the grounds are dismissed.

## CONCLUSION

41. Under s 44(1) of the Act, I make an order affirming the decision of the Tribunal.

DATED this 27<sup>th</sup> day of September 2017



Mohammed Shafiullah Khan  
Judge

